

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Case No. 4:24-CV-00051-M-RN

CYNTHIA B. AVENS,)
Plaintiff,)
v.)
FARIS C. DIXON, JR., DISTRICT)
ATTORNEY, PITT COUNTY)
MEMORIAL HOSPITAL, INC.,)
DR. KAREN KELLY, MEDICAL)
EXAMINER, JOHN/JANE DOE,)
and JOHN/JANE DOE)
Defendants.)

) **ECU HEALTH'S MOTION FOR**
) **EXTENSION OF TIME**
) **TO FILE SUPPLEMENTAL**
) **MEMORANDUM TO MOTION TO**
) **SEAL**
) **JURY DEMAND**

Defendant Pitt County Memorial Hospital, Inc. (“ECU Health”), pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), respectfully files this Motion for Extension of Time to File Supplemental Memorandum to Motion to Seal and states the following in support thereof:

1. On August 5, 2024, Plaintiff Cynthia B. Avens (“Avens”) submitted a Response in Opposition to ECU Health’s Motion to Dismiss. (Docket Entry 57). She attached as Exhibit 12 to the Response a Draft Settlement Agreement that reflects many of the material terms of an agreement entered into in 2016 between Avens and ECU Health. (Docket Entry 57-1).

2. On August 28, 2024, ECU Health filed a Motion to Seal, through which it asked the Court to seal the Draft Settlement Agreement. ECU Health explained that the terms of the Draft Settlement Agreement are confidential and that confidentiality is a material term which served as a primary and critical inducement for the parties to enter into the Agreement. ECU Health also explained that, despite several requests by ECU Health, Avens has taken no corrective

action to have the Draft Settlement Agreement sealed. (Docket Entry 63). ECU Health also submitted a Memorandum of Law to support its position in this regard. (Docket Entry 64). Avens subsequently filed a Response in Opposition on August 29, 2024. (Docket Entry 65).

3. On October 23, 2024, the Court entered an Order wherein it instructed ECU Health first to submit an executed copy of the Settlement Agreement between Avens and ECU Health under seal by October 28, 2024, and second to file a supplemental memorandum explaining: “(a) whether the public’s right of access to the settlement agreement and, to the extent it differs from the signed document, the unexecuted settlement agreement Avens filed stems from the common law or the First Amendment and (b) how ECU’s interest in keeping some or all the documents from the public outweighs that interest” by October 30, 2024. (Docket Entry 74).

4. ECU Health respectfully moves the Court to enlarge this deadline to November 12, 2024. Terrence McKelvey will be involved in a five-day jury trial in Nashville, Tennessee from November 4, 2024, through November 8, 2024, and is in the midst of preparing for that jury trial. Daniel McClurg got married on October 26, 2024, and will be away on his honeymoon beginning on October 31, 2024.

5. The additional time sought is not for purposes of delay. No parties will be prejudiced by this extension, and it will serve the interests of judicial economy.

6. Pursuant to Local Rule 6.1, the undersigned counsel consulted with Avens and with counsel for Defendants Faris C. Dixon, Jr. and Karen Kelly, M.D. about this Motion. Counsel for the other Defendants have consented to this Motion, but Avens has informed the undersigned counsel that she does not consent to the requested relief.

7. Good cause thus exists for the requested extension of time.

For these reasons, ECU Health respectfully requests that the Court grant the Motion and permit ECU Health to file its supplemental memorandum by November 12, 2024.

Respectfully submitted, this the 28th day of October, 2024.

Respectfully submitted,

/s/ Terrence M. McKelvey
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon all counsel of record via the Clerk of Court's ECF system and upon Plaintiff Cynthia B. Avens via U.S. Mail, postage prepaid, at the address listed below, this October 28, 2024:

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